SENATE BILL No. 1329

Introduced by Senators Marks and Rosenthal
(Coauthor: Assembly Member Connelly)

March 9, 1989

An act to add Section 790.031 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1329, as introduced, Marks. Insurance: good faith.

Existing law prohibits certain unfair and deceptive practices in the business of insurance. However, under existing law, a violation of those statutory provisions does not, in itself, give rise to a private cause of action against an insurer.

This bill would provide that any person engaged in the business of insurance is required to act in good faith toward, and to deal fairly with, policyholders and others, as specified. The bill would provide that a policyholder or other person may bring an action against an insurer or other licensee of the Department of Insurance for a violation of that requirement and other statutory provisions that prohibit unfair and deceptive practices, and may recover compensatory and exemplary damages.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 790.031 is added to the Insurance Code, to read:

790.031. Any person engaged in the business of insurance in the State of California is required to act in good faith toward, and to deal fairly with, current and prospective policyholders and other persons intended to be protected by any policy of insurance. A policyholder or a third party may bring an action against an insurer or licensee for violation of the provisions of this article, including, but not limited to, subdivision (h) of Section 790.03.

In accordance with the Unruh Civil Rights Act, Section 51 of the Civil Code, an insurer shall not arbitrarily discriminate against individuals in the denial of insurance coverage.

The purpose of this article is to regulate unfair insurance practices, including unfair claims practices, by providing state-court remedies, including compensatory and exemplary damages, to policyholders and claimants who are victims of unfair insurance practices. It is specifically intended that these remedies be construed to regulate the business of insurance regardless of whether the policy was purchased individually or as a member of a group, and regardless of whether or not the policy was purchased or provided by or through an employer, and thereby to provide that state-law remedies are available notwithstanding the provisions of the Employee Retirement and Income Security Act, 29 U.S.C. Section 1001 *et seq*.

Any award of punitive damages against an insurer shall not be passed on to policyholders directly or indirectly.